

### **REMARKS/ARGUMENTS**

Claims 1, 9, 15, and 16 have been amended to correct erroneous claim dependencies and for clarity. Claims 1 and 9 have also been amended to specify that the recited herbs may be two or more selected from the group consisting of *Sida* *sps.*, *Boerhaavia diffusa*, *Vitis vinifera*, *Tinospora cordifolia* and *Withania somnifera*. Support for these amendments may be found on page 13, lines 8-9 of the specification. No new matter has been added by way of these claim amendments. Claims 1-16 are pending in the application.

#### **Restriction/Election**

In the Office Action dated April 23, 2007, the Examiner has required restriction between Group I (claims 1-8) and Group II (claims 9-16). In addition, the Examiner has required election of a species of herbals in claim 1 and a species of fermenting agents within claim 15 (although the Examiner listed claim 10, it appears that the Examiner intended to list claim 15). Applicants hereby provisionally elect with traverse to prosecute the claims of Group I, drawn to an herbal soft drink, and the species of *Sida* *sps.* Applicants expressly reserve the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Applicants respectfully request that the Examiner withdraw the Restriction Requirement and examine all of the claims and species together in the present application because the application does not lack unity of invention for the reasons set forth below. At the outset, the Examiner is respectfully reminded that the corresponding international application was not found to lack unity of invention.

The Examiner states that the claims of Groups I and II do not relate to a single general inventive concept because of inconsistencies in the wording of claims 1 and 9 with respect to which plants are required, and because the technical feature that they have in common (an herbal soft drink) is not special according to PCT Rule 13.2 in view of Liepold (German Patent Application 4012000). As amended, both claims 1 and 9 specify that the recited herbs may be two or more selected from the group consisting of *Sida* *sps.*, *Boerhaavia diffusa*, *Vitis vinifera*, *Tinospora cordifolia* and *Withania somnifera*. This technical feature shared by all of the current

claims as amended (an herbal soft drink comprising a concentrated herbal extract obtained from a mixture of two or more herbs selected from the group consisting of *Sida sps.*, *Boerhaavia diffusa*, *Vitis vinifera*, *Tinospora cordifolia* and *Withania somnifera*) is not described or suggested in the Bennett *et al.* reference. Accordingly, Applicants submit that all of the claims of the present of invention meet the unity of invention standards and share a special technical feature over the prior art.

Applicants respectfully request that the Examiner also withdraw the requirement of a species election with respect to dependent claim 15. As explained above, the independent claims 1 and 9 satisfy the requirement of unity of invention. MPEP §1850 provides that “[i]f the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims.”

In view of the above remarks, Applicants kindly request that the Examiner reconsider and examine together all of the present claims and species. Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Appl. No.: 10/539,427  
Amdt. Dated June 22, 2007  
Reply to Office Action of April 23, 2007

Respectfully submitted,

/edward r. ergenzinger/

Edward R. Ergenzinger  
Registration No. 47,549

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Raleigh Office (919) 862-2200  
Fax Raleigh Office (919) 862-2260

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON June 22, 2007.